# STATE OF MICHIGAN

# COURT OF APPEALS

---

CAMAY SZTUMERSKI,

Plaintiff-Appellee,

v

PARAGON TECHNOLOGIES,

Defendant-Appellant.

---

UNPUBLISHED
October 18, 1996

No. 183118
LC No. 93-003989

Before: Saad, P.J., and Holbrook, and G. S. Buth,* JJ.

PER CURIAM.

This is a pregnancy employment discrimination case. Following a jury trial, plaintiff was awarded damages, as well as attorney fees and costs. Defendant appeals from the trial court's denial of defendant's motions for summary disposition and directed verdict, as well as the trial court's award of costs and attorney fees to plaintiff. We affirm.

I

Defendant first claims that the trial court erred in denying its motion for summary disposition. We disagree. Plaintiff alleged that she was discharged in violation of the Elliott-Larsen Civil Rights Act (ELCRA), because she was pregnant. The ELCRA provides, in part, as follows:

> An employer shall not:
>
> (a) Fail or refuse to hire, or recruit, or discharge, or otherwise discriminate against an individual with respect to employment, compensation, or a term, condition, or privilege of employment, because of religion, race, color, national origin, age, sex, height, weight, or marital status. [MCL 37.2202(1)(a); MSA 3.548(202)(1)(a).]

"Pregnancy discrimination" is included within the meaning of "sex" discrimination. *Civil Rights Department v Brighton*, 171 Mich 428, 436-437; 431 NW2d 65 (1988).

---

* Circuit judge, sitting on the Court of Appeals by assignment.

In order to make a prima facie showing of disparate treatment, plaintiff must show that she was a member of a protected class and that, for the same or similar conduct, she was treated differently than one who was a member of a different class. *Hickman v W-S Equipment Co*, 176 Mich App 17, 21; 438 NW2d 872 (1989). In response to defendant's motion for summary disposition, plaintiff presented the following evidence: (1) Each time plaintiff was reviewed by her employer, she received a merit-based raise, although raises were not given to all employees. (2) Another member of defendant's staff who received similar pay increases to plaintiff, but who did not become pregnant, was still employed by defendant. (3) Plaintiff was never warned that her job performance needed improvement, nor was she ever threatened with termination. (4) In front of several employees, including plaintiff, Mark Music (defendant's personnel manager) stated that twelve weeks of maternity leave, as allowed by the Family Leave Act, was "excessive." (5) Despite plaintiff's repeated requests for defendant's policy on maternity leave, Music responded only that, "we're working on it." (6) Two months after she announced her pregnancy, defendant discharged plaintiff. (7) Although defendant claimed the termination was based on plaintiff's telephone demeanor, she was relieved of her telephone duties five months earlier. (8) The only other pregnancy by an employee of defendant occurred before Music became responsible for personnel decisions. This evidence was sufficient to create an inference that plaintiff's termination could have been partially motivated by her pregnancy. Thus, plaintiff raised a genuine issue of fact and defendant's motion for summary disposition was properly denied by the trial court.

II

Defendant next claims that the trial court erred in denying his motion for directed verdict. We disagree. At trial, Music admitted that he did not decide to discharge plaintiff until after he learned that she was pregnant. Music further admitted that plaintiff's maternity leave would burden him and others of defendant's staff. Plaintiff testified that Music appeared annoyed at her repeated inquiries about defendant's maternity leave and that Music failed to give her a meaningful answer. Plaintiff also testified that she was not warned that she might be terminated if her work performance did not improve. When Music terminated plaintiff on May 28, 1993, he stated that it was due to her demeanor on the telephone, yet she had been relieved of her telephone duties five months earlier. Music cited no other reason for plaintiff's dismissal. As stated by the trial court, "the trier of fact could infer from the evidence that pregnancy was a factor in the discharge. . . . I think the jury could infer from the testimony here that [Music] didn't want to be bothered with having [plaintiff] there." Because reasonable jurors could reach different conclusions based on the evidence presented by plaintiff, defendant's motion for directed verdict was properly denied by the trial court. *Jenkins v Raleigh Trucking Services, Inc*, 187 Mich App 424, 427; 468 NW2d 64 (1991).

III

Finally, defendant argues that the trial court erred in awarding actual costs and fees to plaintiff. We disagree. The jury returned a verdict of $8,000 in favor of plaintiff and the trial court awarded costs and attorney fees, for a total judgment of $17,954.57. Defendant contends that MCR 2.405(D)(2) precluded plaintiff from recovering any costs or attorney fees because plaintiff failed to

respond to defendant's offer of judgment of $10. On the facts of this case however, this was a "patently frivolous" offer, and plaintiff was not obligated to respond to it. *Sanders v Monical Machinery*, 163 Mich App 689, 693; 415 NW2d 276 (1987). Thus, MCR 2.405(D)(2) does not preclude plaintiff's recovery of costs and attorney fees.

Plaintiff accepted the mediation evaluation of $5,000, yet defendant rejected it. Thereafter, the jury awarded plaintiff $8,000. Pursuant to MCR 2.403(O), defendant thus became responsible for paying plaintiff's actual costs incurred in the prosecution of the case. (The record shows that the trial court did not award plaintiff the entire amount requested.) Defendant failed to present any evidence that the trial court abused its discretion in awarding costs and attorney fees in the amount of $9,282.15. Accordingly, the award is affirmed. *Hovanesian v Nam*, 213 Mich App 231, 238; 539 NW2d 557 (1995).

Affirmed.

/s/ Henry William Saad
/s/ Donald E. Holbrook, Jr.
/s/ George S. Buth